870.

SUPREME COURT OF THE UNITED STATES.

No. 163.

WILLIAM AND FRANCIS SADLER, COMPT'S.

vs.

THOMAS B. HOOVER & Co.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DIST. OF MISSISSIPPI.

INDEX.

	Original.	Print.
Bill of complaint	1	2
Exhibits A & B	5	4
" C	6	5
Bond sued on	6	5
Bill sued on	6	5
Clerk's certificate	7	6
Answer of Hoover	7	6
" of Dinkins	9	7
" of Chambers	12	9
Replication of complainants	13	10
Difference of opinion	14	10
Clerk's certificate	15	11
Statement of facts	16	11

J. & G. S. Gideon, printers.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Circuit Court U. S.

WILLIAM SADLER and FRANCIS SADLER,
vs.
THOMAS B. HOOVER & Co. Francis Ross and William D. Henry. } Suit in chancery pending in said court.

(*Copy of Bill.*) In Chancery.

To the honorable Samuel J. Gholson, judge of the district courts for the southern and northern districts of Mississippi.

Complainants shew to your honors your orators, William Sadler and Francis Sadler, who are citizens of the State of Mississippi, resident in the county of Madison, that at the May term, 1839, of the circuit court of the United States for the southern district of Mississippi, Thomas B. Hoover, Sylvanus Chambers, and Samuel H. Dinkins, as partners by the style of Thomas B. Hoover & Co., and as citizens of the State of South Carolina, recovered a judgment against your orators, and one Francis Ross, who is also a citizen of the said State of Mississippi, resident in said Madison county, for three thousand five hundred and one dollars and eighty-four cents debt, and three hundred and eighty-three dollars and sixty-five cents damages, with legal interest thereon, from the 17th day of May, 1839, until paid, and costs of suit; and that the same plaintiffs in the same court, at the same term, recovered another judgment against the same defendants, and one William D. Henry, who is also a citizen of the State of Mississippi, resident in said Madison county, for seven thousand eight hundred and eighty-one dollars and sixty-six cents damages, with legal interest thereon from the 17th day of May, 1839, until paid, and costs of suit; and your orators further shew, that a forthcoming bond has been given by the defendants, with Robert Ridley as security in each of said cases, and that said bonds were returned forfeited to the November term 1839, on which executions may be issued; all which appears by the records.

Your orators show that the instruments of writing, on which said judgments were obtained, were given by your orators in consideration of certain negro slaves sold by said Thomas B. Hoover to your orators on the 28th day of October, 1836, for which slaves your orators have bills of sale, one for Frank and Martha, signed with the name of Thomas B. Hoover alone, the other for Scott and Rosa, and Cyrus and Alexander, and Ann and Hannah, signed with the name of Thomas B. Hoover & Co., which bills of sale are marked A & B, and made exhibits to

this bill; and so your orators also exhibit copies of the instruments of writing on which said judgments were obtained, in a certified abstract obtained from the clerk of said court, to verify some of the allegations of this bill, which abstract is marked C. The difference in the amount of money mentioned in the writings sued on, and in the bills of sale, is owing to the fact that 10 pr. cent. was added on the stipulated prices for the time given for payment. Now, your orators show that the other defendants in those suits at law were only the securities of your orators, and that said Robert Ridley, the security in said forthcoming bond, is also a citizen of the State of Mississippi, resident in said Madison county.

Your orators will say, that they have felt themselves greatly aggrieved by the conduct of said Thomas B. Hoover & Co., in connection with the said sale and purchase of said slaves; that they had an understanding with said Thomas B. Hoover, by which they might have been relieved from said contract of purchase, if complied with on his part, but which was not reduced to writing with other parts of the contract; and so your orators have been deprived of its benefits and they have in consequence been greatly defrauded and injured, unless they can obtain relief in your honorable court on the matters hereafter to be stated.

And now your orators shew, that said slaves were brought into the State of Mississippi by said Thomas B. Hoover, acting for himself and the other members of the firm of Thomas B. Hoover & Co., as merchandise and for sale, a short time, not more than a few weeks, before the sale aforesaid, without any certificate of said slaves' characters accompanying them, and were there sold without any record of such certificate, contrary to the constitution and laws of the State of Mississippi, as your orators are well informed and advised.

And your orators shew that said instruments of writing, on which said judgments were obtained, were given in immediate and direct exchange for said slaves, sold as aforesaid. Your orators are advised that this honorable court may interfere to prevent the collection of said judgments obtained on such instruments of writing, the consideration of which is thus against the laws and policy of the country, especially if your orators will do what is equitable on their part, and not take the occasion for acting fraudulently and unjustly themselves. On the principles of equity, your orators submit to a recision of the contract, to restore all of said slaves who are alive, they being yet in the possession of your orators as their own property, to account for the use or hire of all of said negroes, and they include in this offer the increase of said slaves; and your orators will further submit to do and perform whatever of equity your honor may decree in the premises.

Your orators further shew, that they were prevented from making their defence at law, on account of the decisions that had been previously made, as they were advised by their attorney at law, in relation to the illegality of bringing slaves into this State as merchandise, and selling them, and one of your orators expressly asked their attorney to defend the suit at law on the above ground, but he declined to do so, for the

reason above stated. And your orators have been well advised, that several of the circuit court judges of Mississippi, and the predecessor of your honor, had previously decided adversely to the above defence at law, as well as in equity, that is, the defence could not be legally made available, and that this current of decisions was not broken into until the recent decision of your honor to the contrary, at the late November term, 1839, of the United States circuit court at Jackson. Until informed of which decision, your orators supposed that they could not have any such relief, and in giving the forthcoming bonds, and apparently acquiescing in the course of collecting said moneys, they only acted from necessity, as they understood it.

But your orators show, that said Thomas B. Hoover & Co. are unwilling to rescind said contract, and intend to enforce the collection of said judgments; which actings and doings are contrary to equity, as your orators are advised, and tend to their injury; and for as much as they are also advised that they are without remedy, except in this honorable court, and to that end your orators pray, that the members of the firm of Thomas B. Hoover & Co., and the said securities of your orators, may be made defendants to this bill, and compelled to answer it according to the course of the court; and your orators pray, that said Thomas B. Hoover & Co. may be enjoined, now and perpetually, from collecting said judgments on such terms as may be consistent with equity; and your orators pray all such other and further relief as may be consistent with equity and the nature of their case; with proper process.

LEA & KENNEDY,
Solicitors.

State of Mississippi, Hinds county:

Before me, George W. Miller, commissioner of affidavits, duly appointed at the November term, 1839, of the circuit court of the United States, for the southern district of Mississippi, residing at Jackson, Mi., personally appears William Sadler, and makes oath, that the facts stated in the foregoing bill as of his own knowledge are true, and those stated as on information he believes to be true.

W. SADLER.

Sworn to and subscribed before me, this 18th day of December, 1839.

GEO. W. MILLER,
U. S. Commr.

(Copy of exhibit A.)

Rec'd of William and Francis Sadler twenty-five hundred dollars, in full payment for two negroes, Frank, a man about twenty-two years old, and Martha, a woman about twenty years old; said negroes I warrant sound and healthy in body and mind, and slaves for life, and the right and title good, as witness my hand and seal, October the 28th, 1836.

THOMAS B. HOOVER.

Witness:
KILLIS WALTON.

(Copy of exhibit B.)

Rec'd of William and Francis Sadler six thousand six hundred dollars, in full for six negroes, Scott, a man about forty; Ann, a woman about forty; Rosa, a girl about nine; Hannah about nine; Cyrus about sixteen; Alexander about twenty-one years old; said negroes I warrant sound in body and mind, the right and title good, and slaves for life, as witness my hand, October the 28th, 1836.

THOMAS B. HOOVER & Co.

Witness:

KILLIS WALTON.

(Copy of exhibit C.)

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Circuit court U. S., May term, 1839.

THOMAS B. HOOVER & Co, plaintiffs,
against
WILLIAM SADLER, Francis Sadler,
& Francis Ross, defendants. } In debt.

Judgment at said May term, in favor of plaintiffs against said defendants, for the sum of three thousand five hundred and one dollars and eighty-four cents debt, and three hundred and eighty-three dollars and sixty-five cents damages, with legal interest thereon, from 17th day of May, 1839, till paid, and costs of suit; bonded with Robert Ridley, security.

(Copy bond sued on.)

$3,501 84. Twelve months from the first day of January next, we or either of us promise to pay Thomas B. Hoover & Co., or order, thirty-five hundred and one dollars and eighty-four cents, for value rec'd, as witness our hands and seals, October 28th, 1836.

W. SADLER, [SEAL.]
FRANCIS SADLER, [SEAL.]
FRANCIS ROSS. [SEAL.]

THOMAS B. HOOVER & Co., plaintiffs,
vs.
F. & W. SADLER, Francis Ross, and
W. D. Henry, defendants. } In assumpsit.

Judgment at said May term, in favor of plaintiffs against said defendants, for the sum of seven thousand eight hundred and eighty-one dollars and sixty-six cents damages, with legal interest thereon, from the 17th day of May, 1839, till paid, and costs of suit; bonded with Robert Ridley, as security.

(Copy bill sued on.)

CANTON, *Nov'r 1st*, 1836.

Exchange for $6,832 $\frac{50}{100}$.

Fifteen months after date of this our first of exchange, second of the

same tenor and date unpaid,) pay to the order of Francis Ross, six thousand eight hundred and thirty-two $\frac{50}{100}$ dollars, value received, and charge the same to account of, Your obt. servt's.

F. & W. SADLER,
FRANCIS ROSS,
W. D. HENRY.

To Mess. Burke, Watt & Co., New Orleans.

(Endorsed.) Francis Ross, protested for non-acceptance, New Orleans, 6th May, 1837.

M. CHRISTY, *Not. Pub.*

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct:
Circuit court of the United States.

I, William Burns, clerk of the court aforesaid, do hereby certify, that the foregoing extracts are truly taken from the records of my office, and that the copy of bond and bill of exchange are taken from the originals now filed in my office.

In testimony whereof, I hereunto set my hand, and affix the seal of
[L. S.] said court, this second day of December, 1839.

WM. BURNS, *Clk.*

(Copy of answers.)

The separate answer of Thos. B. Hoover, one of the defendants in this case, to the bill of complaint of the complainants.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and exception to the manifold errors and insufficiences in the said bill contained, for answer thereto, or to so much thereof as he is advised is material and necessary for him to answer, answering, saith: that he admits that Syl. Chambers, Saml. H. Dinkins and himself, all citizens of the State of South Carolina, were, on and prior to the 28th Oct., 1836, partners in business, and that for himself, and his said partners, he introduced into the State as merchandise and for sale, and without any certificate of character or record of the same, a number of slaves, a few weeks previous to the day above mentioned; and that about that time he sold the slaves mentioned in the bill to the complainants, to whom he gave bills of sale, and took their bills of exchange or notes, on which he learns and admits judgments were rendered as stated in the bill. The exhibits A, B, and C, referred to in the complainants' bill, not being furnished with the copy of the bill procured from the clerk's office, this defendant cannot say certainly what the apparent difference is in the consideration as stated in the bills of sale and the amount of the notes or bills of exchange; he can state, however, with confidence, that the amount of the notes or bills of exchange was the true amount agreed to be given on the credit thereby allowed for the said negroes; and if such difference appears, it must have been a difference between a cash and a credit sale, and was not entered into with any corrupt or usurious intent.

This defendant denies most positively that there was any understand-

ing or agreement whatever between him and the complainants, at the time of the sale, by which the complainants were to have been relieved from the contract, nor is he aware of any just reason that the complainants could have had for such an opinion.

This defendant insists before this honorable court, that altho' the said slaves were introduced into the State as merchandise and for sale, and without any certificate of their character, that the sale to the complainants was valid, and payment by them is obligatory; and that even regarding the sale as void, as these complainants have failed to avail themselves of this defence on the trial at law, they are precluded from making it now before this court at this late day, when the original judgment has been satisfied by giving a forthcoming bond, on which judgment has been rendered.

As regards the offer by the complainants to rescind the contract by delivering up the negroes in their possession, and accounting for their hire, this defendant does not consent to it. He and his co-partners have dissolved their partnership, and on a division of the assets the demands on these complainants were assigned to his partners, who have therefore the sole right to control them.

This defendant, having himself made the contract of sale with the said complainants, denies that any fraud was practised or attempted on his part, and avers that the contract was fair and honest; the negroes, so far as he is informed and believes, were sound and healthy at the time, and were sold at the then customary prices of the country. He denies all combination, and prays to be hence dismissed with his reasonable costs, &c.

W. R. HILL, *Deft's Sol.*

The State of Mississippi, Madison county.

Thomas B. Hoover, the defendant in the foregoing case, made oath before me, that the matters and things herein before set forth, as stated to be of his own knowledge, are true; that so far as the same is stated to be derived from the information of others, he believes to be true.

T. B. HOOVER.

Sworn to, and subscribed, March 4th, 1840.

HENRY WHITE, *J. P.*

The answer of Samuel H. Dinkins, one of the defendants in the above case, to the bill of complaint of complainants. This defendant, now and at all times saving and reserving to himself all and all manner of benefit of exception to the manifold errors and insufficiencies in the said bill of complainants, for answer thereto, or to so much thereof as he is advised is material and necessary for him to answer, answering, saith, that he admits that he and Sylvanus Chambers and Thomas B. Hoover, were partners in trade of the sale of negroes; that on or before the 28th of October, 1836, they were and still are citizens of the State of South Carolina, and that a number of slaves were purchased by them, and placed in the hands of the said Thomas B. Hoover, as their agent and partner, for the purpose of sale. As regards the sale of the said negroes,

this defendant of his own knowledge is totally ignorant. He has been informed, however, and admits the fact, that the negroes mentioned in complainant's bill were sold to the complainants about the time mentioned, and that after litigation judgment at law *were* rendered against the complainants, as by them stated, for the sum agreed to be given for said negroes, with interest and costs. This defendant does not admit that there was any agreement or understanding by which the contract of sale of said negroes could have been rescinded by the complainants without the consent of the defendants. As this contract was made by the said Thomas B. Hoover, this defendant not being present, and knowing nothing of its terms, he refers to the answer of the said Thomas B. Hoover for all the particulars in regard to it.

This defendant admits, that the said negroes were introduced into the State of Mississippi for sale, and as merchandise, whether with or without any certificate of said slaves' character accompanying them, and a record of such certificate, he is not able to state, but again refers to the answer of said Thomas B. Hoover; he submits however to the court, the contract of sale of said slaves in any court is valid and obligatory, and that the said complainants are both legally and equitably bound to comply with its terms, especially that the said complainant had ample opportunity of making this defence, (if legal and efficient) on the trial of the action at law, and having failed or neglected so to do, they are not entitled to relief in this court; and the said complainants having also entered into a forthcoming bond on levy, which has been returned "forfeited," and judgment rendered, this defendant insists that the said complainants have waived and forfeited any legal or equitable ground of complaint against the original cause of action, and the judgments thereon. As to the proposition of complainants to rescind the contract, by delivering up the negroes in their possession, and accounting for the hire, this defendant does not agree to it, since the changes of the times since the sale, and the death of several of the negroes sold to complainants, (as he is informed,) would make the recision manifestly unjust to the defendants. And this injustice would be still more palpable, if the dead negroes died not from any unsoundness existing at the time of sale, which is denied by this defendant, and not averred by the complainants in their bill, but from the fault of the complainants.

This defendant denies all fraud and combination, and prays that the injunction heretofore granted may be dissolved, and that he may be hence dismissed with his costs and charges.

W. R. HILL, *Deft's Sol.*

State of South Carolina.

Samuel H. Dinkins, the defendant abovenamed, personally appeared before me, and made oath that the matters and things herein before set forth, so far as the same are stated to be his acts and deeds, are true, and so far as regards the information of others, he believes to be true.

S. H. DINKINS.

And I, the undersigned, do hereby certify, that I am an acting justice of the *Quoram* of the State aforesaid.

Sworn to and subscribed before me, this 4th April, day of.

JAMES JEFFERYS, *J. Q.*

South Carolina, York district:

I, Ja. Kuykendal, clerk of the court of general sessions and common pleas, for York district, do certify, that James Jefferys, whose name appears to the within certificate, is, and was at the time of such certificate, an acting justice of the quorum for said district, and that full faith and credit are due and ought to be given all his official acts as such.

Given under my hand and seal of office, at York court house, the 4th [L. S.] day of April, 1840.

JA. KUYKENDAL, *C. C. C. Pls.*

The separate answer of Sylvanus Chambers, one of the defendants to the bill of complainant.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of advantages and benefit of exception to the manifold errors and insufficiencies in said bill of complaint contained, for answer thereto, or to so much thereof as he is advised is material and necessary for him to answer, answering, saith: that he admits Thomas B. Hoover, Samuel H. Dinkins, and himself, all citizens of South Carolina, were, on and prior to the 28th October, A. D. 1836, partners in business in the purchase and sale of slaves. That their partner, Thomas B. Hoover, was intrusted with the sales, and left South Carolina with a number of slaves, the property of the firm, for the purpose of effecting sales in the States south and west, which being done, the money and evidences of debt taken on such sales were, on the return of said Hoover, divided, and that on such division, the notes and bills of exchange mentioned in the complainants' bill, were assigned to this defendant and Saml. H. Dinkins, and the said firm was then dissolved. That so far as regards the sale of the negroes to the complainants, as this was made by the said Thomas B. Hoover, when he was not present, this defendant of his own knowledge knows nothing; he had seen and known some of said negroes before they left South Carolina, and believes that they were then sound, but for the particulars of the contract of sale he begs leave to refer to the answer of the said Thomas B. Hoover, and in this respect to adopt it as his own. This defendant insists before this court, that although said slaves were, as he has been informed and admits, introduced into this State, at the time mentioned in the answer of said Hoover, as merchandise and for sale, and without any certificate of their character, that such sale was and is valid and obligatory. And that whether such sale was valid or not, the defendants having failed to avail themselves of this defence on the trial at law, are not now entitled to the aid and relief of this court, especially since the original judgments for the purchase money have been satisfied by the judgments rendered on the forthcoming bonds. As to the proposition of the said complainants to

rescind the contract, and to deliver up the negroes now in their possession, and account for their hire, it would have been much more equitable and just had they at the same time offered to account for the value of three of said negroes, who have died since the sale, and their hire, since it is not pretended in their bill that these negroes were unsound at the time of the sale. This deponent, however, does not consent to such recision, should the complainants even purpose to account for the price agreed to be given for the negroes that are dead, and their hire; as neither he, nor his partners, have been guilty of any fault or fraud, he cannot see that in equity and good conscience they should sustain the loss in the subsequent depreciation in this species of property. This defendent, however, submits to the court, that if the said contract of sale should be rescinded on the ground of its illegality, or from any other cause, that the said complainants ought in justice to be decreed, not only to deliver up the negroes now in their possession, and to account for their hire, but also to account for the slaves who have died since the sale, and their hire, inasmuch as the defendants have acted in *good* and committed no wilful violation of the laws of the land; and as a further reason why, in case of a decree rescinding the contract, these defendants should not sustain the loss occasioned by the death of the said negroes, this def't, from information on which he relies, believes and avers, that their death was occasioned through the fault and improper treatment of the said complainants. This defendant denies all fraud and combination, and prays that the injunction heretofore granted be dissolved, with damages, and he hence dismissed with his reasonable costs, &c.

W. R. HILL.

The State of Mississippi, Madison county:

Sylvester Chambers, the def't within named, made oath before me, that the matters and things contained in the answer on the sheet, so far as they are stated to be his own act and deed, are true, and those stated to be derived from the information of others, he believes to be true.

SYLVANUS CHAMBERS.

Sworn to and subscribed, Apl. 13th, 1840.

JAMES PRIESTLY, *J. P.*

(*Copy of Replication.*)

And the complainants, by their solicitor, come and say, the answers of the defendants are not true; and that the allegations of the bill are true; and as therein the complainants continue to pray.

PRYOR LEA, *Sol.*

This cause coming on to be heard this 18th day of May, 1844, before the honorable Peter V. Daniel and Samuel J. Gholson, judges, upon the bill, answer, and replication, and was argued by counsel; and the court having taken time to consider, and not being able to agree in opinion what decree should be made in the cause, one of the judges being of opinion that a decree should be rendered in favor of the complainants, and the other being of opinion that a decree should be rendered in favor

of the defendants. It is therefore ordered, at the request of counsel for both complainants and defendants, that said difference of opinion be certified to the Supreme Court of the United States, for their decision, whether a decree in this cause should be rendered in favor of the complainants, or in favor of the defendants.

P. V. DANIEL, [SEAL.]
S. J. GHOLSON. [SEAL.]

UNITED STATES OF AMERICA,
Southern district of Mississippi.
Circuit court U. S.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing fourteen pages contain a true and correct copy of the papers referred to in said case, together with the certificate of the difference of opinion in said case ordered to be certified to the Supreme Court of the United States, at the May term, A. D. 1844, of the said circuit court.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court at Jackson, this 14th day of January, A. D. [SEAL.] 1845.

W. H. BROWN, *Clk.*

WM. SADLER and FRANCIS SADLER. vs. THOMAS B. HOOVER & others. } In Chancery.

In the circuit court of the United States, for the southern district of Mississippi.

The bill states that at May term, 1839, of the circuit court, the defendants, Thomas B. Hoover & Co., recovered judgment against them, and one Francis Ross, their surety, for $3,501 84 debt, and $383 65 damages, with interest thereon from 17th May, 1839, and costs of suit; and at the same term, another judgment against them, and one W. D. Henry, as their surety, for $7,881 66 with interest, from 17th May, 1839, and costs of suit. That executions issued on said judgments, and forthcoming bonds have been given with one Robt. Ridley, as security in each case, and that said bonds were returned forfeited to the November term, 1839, and executions about to issue thereon; that the instruments of writing, on which these judgments are founded, were given by complainants in consideration of certain slaves sold by the firm of Thomas B. Hoover & Co. to them, on the 28th October, 1836, and for which bills of sale were given, [exhibits A & B, of the record, are copies of the bills of sale, and exhibit C, shows copies of the causes of action;] that complainants feel themselves greatly aggrieved, by the conduct of Thomas B. Hoover & Co.; that they had an understanding with Hoover, by which they might have been relieved from the contract, but which was not reduced to writing with other parts of the contract, and complain-

ants have thus been deprived of its benefit, and will be greatly injured if relief is not afforded them on the grounds hereafter stated.

The complainants allege that the said slaves were introduced into this State by the said Thomas B. Hoover, for himself and partners, but a few weeks previous to such sale, as merchandise and for sale, without any certificate of character, and were sold without any record of such certificate, contrary to the constitution and laws of the State of Mississippi; and that the causes of action on which the said judgments were rendered were given in direct exchange for said slaves; that complainants have been advised, that this court will interfere to prevent the collection of these judgments, if they will submit to act rightly, and not use the occasion to act fraudulently and unjustly. On this principle of equity, complainants submit to a recision of the contract, offer to deliver up to defendants all the said negroes now alive, and to account for the hire of them, including also their increase, and to perform whatever else may be required by the court. Complainants aver, that they were prevented from making this defence at law by advice of counsel, on account of decisions adverse to it previously made by this court and the circuit courts of the State of Mississippi; and the current of decisions to this effect was not broken into until the decision of this court, at the late November term, (1839;) and until then, complainants supposed they were not entitled to relief; on this ground, and under this belief they entered into forthcoming bonds; that defendants, Hoover & Co., are unwilling to rescind said contract, and are about to enforce the collection of said judgments; the bill prays process, and a perpetual injunction against the judgments.

On application to the district judge, he granted a fiat for an injunction, on the 4th Jan'y, 1840, and injunction was issued accordingly.

Previous to the May term, 1840, the defendants Thomas B. Hoover, Samuel H. Dinkins and Sylvanus Chambers, members of the firm of Thomas B. Hoover & Co., answered.

Thomas B. Hoover, in his answer, admits, that as a member of said firm, and on its behalf, a few weeks previously to the sale, he introduced into the State of Mississippi, as merchandise and for sale, a number of slaves, without any certificate of character, or record of the same, and that he sold the slaves named in the bill to the complainants, and took their bills of exchange and note therefore, on which the said judgments were rendered. He denies positively any arrangement or understanding between him and complainants, by which they were to be relieved from their contract; that altho' these slaves were introduced for sale, the defendant insists on the validity of the contract; that even regarding the contract as illegal, the complainants having failed to make this defence on the trials at law, they are now precluded from availing themselves of this ground of relief in chancery, especially that complainants have given forthcoming bonds, on which judgments have been rendered.

As to complainants' offer to rescind the contract, and to restore the slaves, the defendant states, that on a dissolution of the partnership he transferred the liabilities of complainants to his co-partners; he has there-

fore no control of the judgments; that having made the contract of sale he can state positively, that no fraud or imposition of any kind was practised on complainants; that the contract was fair and honest on his part; that the negroes were, as he believes, sound and healthy, and were sold at the customary prices.

Saml. H. Dinkins, in his answer, admits that he was a member of the firm of Thomas B. Hoover & Co. He knows nothing personally of the sale of the slaves, and on this point refers to the answer of Thomas B. Hoover, the trading partner. He admits, however, that the slaves were sold to complainants; that, after litigation on the instruments given for them, judgments were rendered against complainants for the sums agreed to be given. He insists on the legality and validity of the contract, and that the complainants, having failed to make this defence at law, cannot now avail themselves of it as a ground of relief. He rejects the offer of the bill to rescind the contract as being manifestly unjust, since the great change in the value of this property, and because the complainants do not offer to account for the value of three slaves since dead.

Sylvanus Chambers states in his answer, that as to the introduction of the negroes into Mississippi, and their sale, he knows nothing personally. He insists on the validity of the contract, and that whether originally legal or not, complainants cannot now avail themselves of this ground for relief, having failed to set it up as a defence at law. He rejects, also, the proposition to rescind the contract, for the reasons stated in the preceding answer, and insists, that as the contract was fairly entered into without any wilful intent to violate the laws of Mississippi, that should the court decree it to be void, he and his partners should be compensated also for the value of the three dead slaves, as there is no allegation of their unsoundness; and especially, as he charges, that they died from the cruel treatment of the complainants.

At May term, 1840, a motion was made, on the part of defendants, to dissolve the injunction, and term, this motion was overruled.

At the May term, 1844, the cause came to a hearing on bill, answers, and replication, before their honors Peter V. Daniel and Saml. J Gholson, judges. And the court not being able to agree in opinion, one of the said judges being of opinion that a decree should be rendered for the complainants, and the other that a decree should be rendered for the defendants, it was ordered, at the request of counsel on both sides, that this difference of opinion be certified to the Supreme Court of the United States for their decision.

The foregoing is a correct abstract of the material facts in the above stated cause. Jan'y 8, 1845.

LEA & LEA, *Compt's Sol.*
W. R. HILL, *Deft's Sol.*

Filed, 13 Jan'y, 1846.